

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 65-23300

Priority: November 14, 2008

Maximum Diversion Rate: 5.00 CFS

This is to certify, that LAST CHANCE DITCH CO
PO BOX 428
EMMETT ID 83617

has applied for a permit to appropriate water from:

Source: UNNAMED DRAIN

Tributary: PAYETTE RIVER

and a permit is APPROVED for development of water as follows:

BENEFICIAL USE

IRRIGATION

PERIOD OF USE

03/01 to 11/15

RATE OF DIVERSION

5.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED DRAIN L1 (NW1/4NW1/4)

Sec. 34, Twp 07N, Rge 01W, B.M., GEM County

UNNAMED DRAIN L2 (NW1/4SE1/4)

Sec. 33, Twp 07N, Rge 01W, B.M., GEM County

PLACE OF USE: IRRIGATION (SEE CONDITION 9 AND 10)

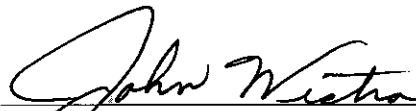
CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2010**.
2. Subject to all prior water rights.
3. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.
4. This right does not grant any right-of-way or easement across the land of another.
5. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water. The right holder shall not divert water after June 15 each year unless the watermaster authorizes continued diversion and use of water under this water right. When the watermaster informs the right holder that water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use. The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.
6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65.
7. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
8. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for irrigation of the lands above.

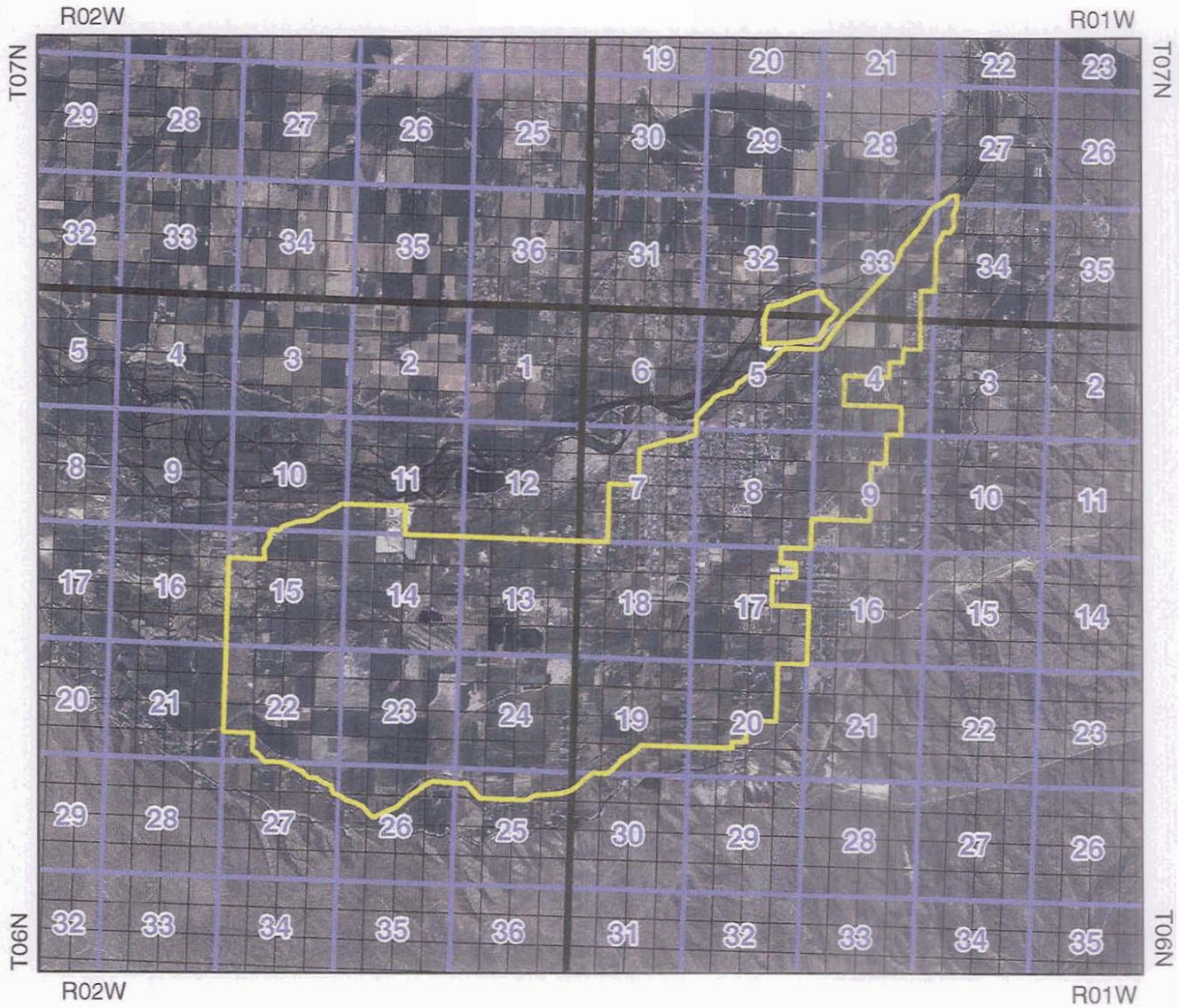
State of Idaho
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Permit to Appropriate Water
NO. 65-23300

9. The boundary encompassing the place of use for this water right is described with a digital boundary as authorized by Idaho law. The data comprising the digital boundary are stored in the electronic document management system of the Department and are incorporated into this approval by this reference. A map depicting the place of use is attached to this approval document to illustrate the place of use described by the digital boundary.
10. This right is limited to the irrigation of 8254 acres within the place of use described above in a single irrigation season.
11. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 1st day of December, 2009.


JOHN WESTRA, Western Regional Manager

State of Idaho
Department of Water Resources
Permit to Appropriate Water
65-23300
Water Service Area Boundary for Last Chance Ditch Co
November 20, 2009



Legend

-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

December 1, 2009

LAST CHANCE DITCH CO
PO BOX 428
EMMETT ID 83617

RE: Permit No.65-23300

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-334-2190.

Sincerely,


for John Westra
Western Regional Manager

Enclosure(s)

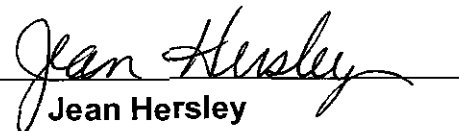
CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

65-23300

**LAST CHANCE DITCH CO
PO BOX 428
EMMETT ID 83617**



Jean Hersley
Office Specialist II

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

RECEIVED

OCT 29 2009

29512 76426

1 IDAHO DEPT. OF WATER RESOURCES

WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)
WATER RESOURCES
WESTERN REGION

)SS.

County of Canyon)

Marissa D. McNeal
of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Emmett Messenger-Index, a weekly newspaper published in the City of Emmett, in the County of Gem, State of Idaho; that the said newspaper is in general circulation in the said County of Gem, and in the vicinity of Emmett, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 times(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.
4. That said notice was published the following:

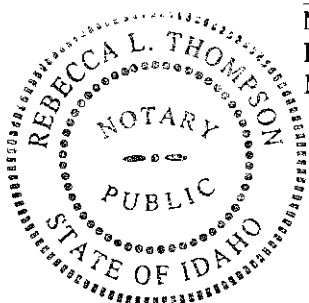
10/21/2009 10/28/2009

STATE OF IDAHO)
County of Canyon)

On this 28th day of October in the year of 2009 before me a Notary Public, personally appeared. Marissa McNeal, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.

Notary Public for Idaho
Residing at Nampa

My Commission expires April 19, 2014



LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

65-23300

LAST CHANCE DITCH CO
PO BOX 428
EMMETT, ID 83617

Point of Diversion L1(NWNW) S34 T07N R01W GEM County Source UNNAMED DRAIN
Point of Diversion L2(NWSE) S33 T07N R01W GEM County Source UNNAMED DRAIN
Use: IRRIGATION 03/01 to 11/15 5 CFS
Total Diversion: 5 CFS
Date Filed: 11/14/2008

Place of use is within the Last Chance Ditch Company service area.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Idaho Code § 42-211. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 11/9/2009. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN,
Interim Director

October 21, 28, 2009

76426

✓ OK DB 11/16/09

RECEIVED

OCT 27 2009

WATER RESOURCES
WESTERN REGIONIDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATERMASTERApplication No: 65-23300Applicant's Name: Last Chance Ditch Company

Watermaster's Recommendation:

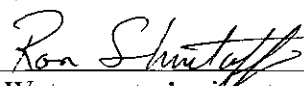
- a) X I do not oppose approval of this application.
- b) I do not oppose approval of this application if conditioned as follows:

 No water shall be diverted under this right after June 15* of each year without prior approval of the watermaster. New rights are curtailed each year based on the water supply (seniority system). Use of a new right can continue during water shortages if the new right is mitigated with a lease of storage water from the Watermaster.

Other conditions: _____

- c) I oppose approval of this application for the following reasons:
- _____
- _____

- d) Additional comments: _____
- _____
- _____

Dated this 24th day of March, 2009Water District No: 65

 Watermaster's signature

* Watermaster provided copy of this recommendation to the applicant regarding 6/15 curtailments.